

23 JUL 1979

Executive Registry

79-1182/5

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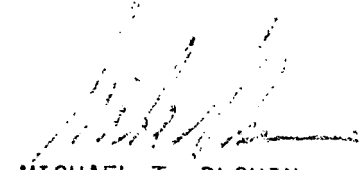
Admiral Stansfield Turner
Director of Central Intelligence
Washington, D.C. 20205

Dear Admiral Turner:

In accordance with the provisions of Section 3-402, Executive Order 12065, the Information Security Oversight Office has, in consultation with representatives of the Archivist of the United States, reviewed your agency's 20-year systematic review guidelines submitted with your letter of June 5, 1979.

We have determined that, at this point in time, the guidelines meet the requirements of Executive Order 12065 and its implementing directive. Should experience with the system indicate that changes in the guidelines are required, we will notify your office.

Sincerely,



MICHAEL T. BLOUIN
Director

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17 April 1979

MEMORANDUM FOR: Chief, IMS/FOIA and Privacy Group
Chief, FPG/Initial Review Branch

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FROM:

Deputy Chief, FPG/Initial Review Branch

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SUBJECT: Revision of CIA Handbooks on FOIA
PA and EO 12065

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This memorandum discusses several inter-related problems dealing with classification reviews under EO 12065 and FOI/Privacy Acts, and the need for revision of the Agency Handbooks governing FOIA/PA/EO Classification Review policies and procedures to conform to the new EO. The memorandum highlights the EO provisions for a Classification Review, reviews some of the conflicting or ambiguous guidance provided in the handbooks and makes recommendations for revisions in the handbooks that must be made before the Freedom of Information and Privacy Group can intelligently comply with the EO 12065 and its application to the Freedom of Information Act at the Initial and Appellate levels.

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OVERVIEW OF THE DECLASSIFICATION REVIEW GUIDANCE

1. The EO 12065 specifies two types of review for declassification: systematic and mandatory.

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SYSTEMATIC REVIEW

2. The Systematic Review applies only to "permanent records" as defined by the Records Control Schedule, jointly agreed upon by the Archivist of the U.S. and CIA. According to Les Raty, only about 3% of all DO records are "permanent". Predecessor Records falling within the category of "permanent" will be included on a separate Records Control Schedule, currently being coordinated with the Archivist.

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3. Guidance for systematic reviewing non-permanent records is in "...Classified non-permanent records scheduled to be retained for more than twenty years need not be systematically reviewed but shall be reviewed for declassification upon request...." Who may request declassification review? says: "The
CRG (Classification Review Group) may also declassify or downgrade, upon formal request by a duly authorized Agency official, permanently valuable documents or other items of

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information which have remained classified for shorter periods of time than those specified in Para. 14 above." (Para. 14a. described permanent records having remained classified 20-30 years or subject to systematic review under the EO.) Other CIA officials who declassify downgrade any permanent document must notify CRG of their action and CRG is charged with recording this action in their computerized index

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MANDATORY REVIEW

4. Mandatory Review for Declassification is required by the EO for two types of requests: EO 12065 and FOIA (as described in the Federal Register). According to the Mandatory Review applies to all documents over 10 years old originating with CIA without distinction between permanent or non-permanent records.

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5. "Requests for declassification under Mandatory Review for Declassification which are submitted under the provisions of the Freedom of Information Act shall be processed in accordance with the provisions of that Act." (Sec. 3-502 of EO 12065) There are two methods to request Mandatory Review for declassification because documents in

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Presidential Libraries are not subject to FOIA but must respond to an EO request for documents. Other Agencies' documents may be accessible by either the EO or FOIA. []

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6. The Information and Privacy Staff of the DDA is the "CIA component of records" for all requests for Mandatory Review. [] says that IPS shall establish procedures for processing a request for Mandatory Review and cites

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[] as having those procedures. A review of [] shows that there are no procedures for the Mandatory Review as proscribed by either the EO or the [] because

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[] was written before the new EO. [] has agreed to call a meeting of CRB and IPS and discuss the revision of the []

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RECOMMENDATIONS

7. The following are recommendations for discussion with DDA/IPS and CRB for revision of []

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DISCUSSION

The [] divides responsibility for recording Systematic and Mandatory Declassification Review action between CRB and IPS, respectively and do not answer the question whether IPS is to record the fact that a Classification Review took place or the record of the exact

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judgements taken. The specifically says that CRB must record classification review judgements taken on permanent records but is silent on whether IPS records any judgements on the non-permanent records being reviewed under Mandatory Review. It is conceivable that in a single EO or FOIA request a reviewing office might have to review both permanent and non-permanent documents and be obliged to follow different procedures and report to two authorities to record the actions taken.

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RECOMMENDATION

a. Only the Systematic Declassification Review will require that "permanent" records", as described in the Records Control Schedule for each Directorate, be recorded by CRB as a central office of record.

b. Mandatory Classification Review - General
At the initial and appellate levels, nonpermanent documents, responsive to any request under the PA, FOIA, EO or for Mandatory Review for Declassification, will be reviewed for declassification, but, because these documents are nonpermanent, only the following need be accomplished:

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1.) that a classification review took place by identified officer with TS authority.

2.) that the officer made a judgement that the document remain classified or be declassified, basing that judgement on criteria in the DO Classification Guide without citing a section of the Guide or establishing any rereview date.

3.) that a record of the classification action for IPS was put in a computer.

There should be no procedures for classification review at initial and appellate levels requiring nonpermanent records be stamped, classification levels be established and justified by citing the Classification Guide, or a rereview date be assigned. Nor should there be any requirement that the DCI authorize continued classification of nonpermanent documents over 20 years old (30 years old, if foreign government information). Because the documents are nonpermanent, the record of action should be recorded for IPS not in CRB. (However, during the Systematic Classification Review, made at a later date, CRB may consult IPS' record of classification review if the document reviewed by CRB was both "permanent" and previously reviewed and recorded for IPS. At that time

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CRB may need to consult the component making the Mandatory Classification Review judgements to ensure that CRB does not inadvertantly declassify documents.)

c. Non-Predecessor Documents Over 20 Years Old

Any CIA documents responsive to FOIA/PA/EO requests at the initial or appellate levels that are 20 years old (30 years for foreign government information) will be treated according to the procedures described for Mandatory Review in Para. 2 above. Even if a 20/30 year old document, were "permanent", it is presumed that this document will be given a Systematic Review in its proper turn by CRB and therefore does not require DCI authorization for continued classification proscribed only for Systematic and not for Mandatory Classification Reviews.

d. Referred Documents Over 20 Years Old Under FOIA

Documents over 20 years old referred under FOIA to CIA by other Agencies containing CIA information, if deemed "permanent" records by the originating Agency and requests that CIA make a Mandatory or Appellate Classification Review, the procedure for Systematic Review described in 25X1
 will apply and the document will be reviewed in FPG for 25X1
classification, at initial and appellate levels and forwarded to CRB to obtain the DCI's authorization for continued classification.

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e. Predecessor Records

Predecessor Records may be deemed "permanent" by the Archivist of the US under the forthcoming Records Control Schedule. When pertinent to any PA/FOIA/EO request these records will be reviewed in FPG for classification, at initial and appellate levels and forwarded to CRB to obtain the DCI's authorization for continued classification.

DISCUSSION

In the functional description of IPS' responsibilities leaves the erroneous impression that a requester can obtain a mandatory classification review through the Privacy Act.

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RECOMMENDATION

The word "Privacy Act" should be deleted from this paragraph or the entire paragraph should be rewritten to clarify how requests for Mandatory Review can be made.

DISCUSSION

Section 3-505 of the EO and

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prohibits the refusal to confirm the existence or nonexistence of a document requested under FOIA or Mandatory Review of the EO unless the fact of its existence or nonexistence would itself be classifiable under the EO. This provision seems to be an empty letter because the requester when he requests a Mandatory Review of a document under FOIA or the EO has already identified the document from a document inventory list or reference in a document and is aware of its existence. If he is aware of its existence and referral, CIA cannot very well deny its existence.

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RECOMMENDATION

The EO and both should be revised to delete this item.

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8. We believe that the language of the new EO in distinguishing between "permanent" and "nonpermanent" documents requires a revision of if we are to comply intelligently with the Privacy and Freedom of Information Acts and the new EO. Our recommendations are made after a review of current procedures in existing handbooks under the old EO or that grew up in response to the absence of guidance. Both types of procedures now appear either out of date or excessive to the requirements of the new EO. If the recommendations above are included in revisions of the there will

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be greater efficiency and faster response to initial and appealed FOIA/PA/EO requests while complying with the competing injunctions for maximum disclosure without compromising sources and methods. The net result will be a reduction in the costs of time, money and manpower that will permit the Agency to manage better its backlog of requests with fewer resources. ☐

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